

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
JOHNSTOWN DIVISION**

ANTHONY J. ZANGHI, KENNETH J.
SOWERS, DOMINIC MCCUCH, JAMES
HOHMAN, DARRELL SHETLER *on behalf
of themselves and others similarly situated,*
and UNITED STEEL, PAPER AND
FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO/CLC,

Plaintiffs,

v.

FREIGHTCAR AMERICA, INC.,
JOHNSTOWN AMERICA CORPORATION,
and JOHNSTOWN AMERICA
CORPORATION USWA HEALTH &
WELFARE PLAN,

Defendants.

Civil Action No.: 3:13-CV-00146

Document Electronically Filed

**MOTION FOR LEAVE TO FILE REPLY
BRIEF**

MOTION FOR LEAVE TO FILE REPLY BRIEF

Defendants, FreightCar America, Inc., Johnstown America, LLC f/k/a Johnstown America Corporation, and Johnstown America Corporation USWA Health & Welfare Plan (collectively, “FreightCar”), respectfully seek leave from this Court to file a Reply Brief (attached hereto as Exhibit “A”) in order to correct several gross misrepresentations of both the law and the facts set forth in the plaintiffs’ response to FreightCar’s Motion to Dismiss, Transfer, or Stay Proceedings.

The decision to grant leave to file additional briefing is committed to the sound discretion of the court, *see Hess Fence & Supply Co., Inc. v. U.S. Fidelity & Guaranty Co.*, No. Civ. 04-CV-2648, 2006 WL 3325445, at *2 (M.D. Pa. Oct. 12, 2006), and is appropriate where, as here,

the arguments or clarifications contained therein would enable the court “to more fully and fairly decide a particular issue.” *Walsh v. Irvin Stern’s Costumes*, Civ. No. 05-2515, 2006 WL 166509, at *12 (E.D. Pa. Jan. 19, 2006). Under this standard, granting FreightCar leave to file its reply is amply warranted.

First and foremost, the plaintiffs’ account of the events preceding FreightCar’s decision to file suit in the Northern District of Illinois is a blatant distortion of what actually occurred, and FreightCar’s reply brief corrects the record. Additionally, the plaintiffs have misconstrued the parties’ previous settlement agreement approved by Judge Cercone and the local rules relating to this Court’s ability to transfer this action to Pittsburgh. Finally, the plaintiffs have mischaracterized an electronic minute order entered by the Illinois Court which did not “stay proceedings” over FreightCar’s “opposition” as the plaintiffs maintain. Rather, the order stayed only the date by which the individual defendants must answer FreightCar’s complaint, as well as the deadline for the parties to commence initial discovery and settlement conferences.

FreightCar’s succinct eight-page reply, together with the affidavit of Nancy Ross, counsel for FreightCar, clarifies the record before this Court and will enable this Court to more fully and fairly decide FreightCar’s Motion to Dismiss, Transfer, or Stay Proceedings.

For the foregoing reasons, FreightCar respectfully requests that this Court issue an order granting FreightCar leave to file its proposed reply, a copy of which is attached hereto.

Respectfully Submitted,

/S/ Michael J. Parrish, Jr.

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